

fully consider the legitimate needs of public safety agencies in managing the private land mobile spectrum.

The Conferees believe that implicit in the guidelines enumerated in subsection 331(a) is the principle that the Commission may not employ auctions in managing the spectrum made available for use by the private land mobile services. The Conferees are concerned that use of an auction—that is, selling frequency space to the highest bidder—or a similar method which turns upon a user's monetary ability to pay for a frequency allocation will work to the detriment of an efficient and competitive private land mobile spectrum. Thus, by providing the guidelines in this subsection, the Conferees intend to specifically prohibit the Commission from employing auctions or similar economic methods in managing the private land mobile spectrum. However, this prohibition should not be construed to limit the ability of the Commission to use lottery procedures for purposes of granting private land mobile licenses, or to impose reasonable fees upon a private land mobile licensee after the grant of the license.

*Subsection 331(b).*—The Conferees recognize the value of the assistance provided to the Commission by non-Federal Government advisory coordinating committees in the frequency assignment process for the private land mobile and fixed services. Subsection 331(b) specifically authorizes the Commission to utilize the services of such committees.

The number of licensees and users in the private land mobile and fixed services is already large. There are now approximately 850,000 stations in these services and there are almost 25,000 applications received each month for private land mobile and fixed station licenses. The number of licenses is expected to increase even more dramatically in the future. *See Future Private Land Mobile Requirements*. Notice of Inquiry, FCC 82-2, PR Docket No. 82-10, released January 26, 1982.

From the data on record with the FCC, the Conferees are convinced that the frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating committee activity, some of these applicants would not be able to afford the engineering required in the applications process. Thus, by essentially equalizing the frequency selection process for all applicants, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. The Conferees note that this pro-competitive aspect of frequency coordination is of particular importance to small business operators.

To further promote fairness in frequency allocation, the Conferees encourage the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service. The Conferees also encourage the Commission to develop rules or procedures for monitoring the performance of coordinating committees.

The Conferees note that the Commission presently accepts applications for private land mobile services licenses which are based on

appropriate field study coordination techniques. *See* 47 C.F.R. 90.175 (1981). In adopting these provisions authorizing the Commission's use of advisory coordinating committees for coordinating the assignment of frequencies to stations in private land mobile service and in the fixed services, the Conferees do not intend to mandate the elimination of frequency coordination by way of field study engineering reports. The FCC would thus have the discretion to conduct frequency coordination through use of a frequency coordinating committee or by accepting the submission of a field study report, as the Commission determines best serves the public interest.

The section also makes it clear that advisory committee personnel retain their private sector status. They are not to be considered employees of the United States Government and they are not covered by the provisions of either 5 U.S.C. 2101 et. seq. or 31 U.S.C. 665(b) (1976). Finally, this section makes it clear that any committee which assists the Commission in this regard is not subject to the provisions of the Federal Advisory Committee Act.

*Subsections 331(c) and 3(gg).*—The purpose of adding Subsections 3(gg) and 331(c) to the Communications Act of 1934, as amended, is threefold:

- (1) to provide a definition of private land mobile service;
- (2) to delineate the distinction between private and common carrier land mobile services; and,
- (3) to specify the appropriate authorities empowered to regulate these same services.

The Communications Act of 1934, as amended, does not include a definition of the private land mobile services. New subsection 3(gg) adds this definition and thereby provide explicit Congressional support and guidance for existing and future FCC regulation of these services. The definition adopted herein encompasses the myriad of radio systems utilized by these governmental, commercial, industrial and transportation licensees which range from small relatively uncomplicated two-way dispatch systems, to complex ones involving multiple transmitters to cover wide areas. The private land mobile services currently consist of the following radio services: local government, police, fire, highway maintenance, forestry conservation, special emergency, power, petroleum, forest products, motion picture, relay press, special industrial, business, manufacturers, telephone maintenance, motor carrier, railroad, taxicab, automobile emergency, and radiolocation. The Conferees expect the Commission to add, modify, or delete private land mobile services as the need arises, consistent with the guidelines specified in subsection 331(a).

New Subsection 331(c) both establishes a clear demarcation between private and common carrier land mobile services and specifies that only the latter may be regulated on a common carriage basis. By contrast, no person, participating in the private land mobile services, whether as a licensee, equipment supplier or otherwise, shall be classified as a common carrier with respect to its participation in these services. The distinction between private and common carrier land mobile services is the subject of considerable litigation between private land mobile operators and radio common carriers before the FCC and the courts. The Conferees believe that

*Frequency coordinating committees*

S. 929 specifically authorizes the FCC to rely upon the private sector, through non-Federal Government frequency coordinating committees, in the initial frequency coordination process of assigning channels above 30 MHz in the Private Land Mobile Services. S. 929 reflects existing FCC practices which provide that in addition to using the services of coordinating committees, applicants may also effect coordination through the submission of their own reports. S. 929, therefore, does not alter the FCC's overriding responsibility to manage and assign the use of the land mobile spectrum.

Some commentators also have suggested that the FCC should adopt rules and regulations outlining the responsibilities of the coordinating committees so as to provide them with clear guidance, monitor their performance, and encourage the development of spectrum efficient techniques. In this regard, it is noted that one of the major private land mobile organizations, the Land Mobile Communications Council (LMCC), has made a formal proposal to the FCC concerning this matter and has suggested that there be rule making to establish criteria for these coordinating groups to apply in their coordinating efforts in the 800 MHz bands available to these services. The LMCC proposal also calls for continued monitoring of the frequency coordinating groups' performance. The Committee further notes that the FCC itself now has an outstanding proceeding for developing criteria for coordinating committees and procedures for FCC monitoring of their performance. (See Notice of Inquiry, Docket No. 21229, 42 Fed. Reg. 26029 (1977)).

From data on record with the FCC, the Committee is convinced that the frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also enable all users, large and small, to obtain the coordination necessary to place their stations on the air. Without such frequency coordinating committee activity, some of these applicants would not be able to afford the engineering required in the applications process. Thus, by essentially equalizing the frequency selection process for all applicants on a nationwide basis, the applicants are placed on a competitive parity, with no one applicant operating on a better or more commercially advantageous frequency than his or her competitor. The Committee notes that this pro-competitive aspect of frequency coordination is of particular importance to small business operators.

## LEGISLATIVE HISTORY

S. 929 was introduced by Senator Goldwater (with Senators Packwood, Schmitt, Pressler, Stevens, Cannon, Hollings, and Inouye) on April 8, 1981. The Committee on Commerce, Science, and Transportation did not hold hearings, but extensive written comments were received from interested parties, which included suggested revisions, additions, and deletions. The Committee has considered all views presented in recommending the legislation reported herein.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of